



## **Case Summary**

Joseph E. Deverick appeals an order revoking his probation and reinstating the previously-suspended two-year portion of his sentence for Auto Theft. We affirm.

## **Issue**

Deverick presents the sole issue of whether the trial court abused its discretion by reinstating his previously-suspended sentence despite his drug addiction and need for treatment.

## **Facts and Procedural History**

On October 3, 2006, Deverick received a four-year sentence of imprisonment following his plea of guilty to Auto Theft, a Class C felony. Two years were suspended to probation.

On July 10, 2007, November 20, 2007, and January 8, 2008, the State filed notices of probation violations. The State alleged that Deverick had failed to pay probation fees, failed to provide a current address to the drug and alcohol program to which he was assigned, failed to take drug screens on multiple occasions, tested positive on drug screens for cannabinoids, methamphetamine, and cocaine, and had been arrested on new felony charges of Forgery and Theft.

On July 10, 2008, the trial court conducted a hearing on the probation violation allegations. After finding that Deverick had violated the terms of his probation, the trial court ordered Deverick's probation revoked and that he be incarcerated for the previously-suspended portion of his sentence. Deverick appeals.

## Discussion and Decision

Placement on probation is a conditional liberty and not a right. Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999). A probation revocation hearing is in the nature of a civil proceeding and, therefore, the violation need only be proven by a preponderance of the evidence. Smith v. State, 727 N.E.2d 763, 765 (Ind. Ct. App. 2000). Proof of a single violation of the conditions of probation is sufficient to support a decision to revoke probation. Bussberg v. State, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005), trans. denied.

Indiana Code Section 35-38-2-3(g) provides as follows:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
- (2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

We review the trial court's revocation of probation and sentencing decision for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005). Generally speaking, as long as the trial court follows the procedures outlined in Indiana Code Section 35-38-2-3, the trial court may properly order execution of a suspended

sentence. Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006).

Here, Deverick's probation officer testified that Deverick tested positive on drug screens on fourteen different occasions and failed to submit to ordered drug screens on eleven occasions. Deverick does not contest the sufficiency of this evidence to establish a probation violation. Rather, he claims that he was entitled to leniency because of a circumstance that might have constituted a mitigating circumstance at his original sentencing, i.e., his drug addiction. However, Deverick is not bringing a direct appeal following the imposition of his original sentence, and he may not collaterally challenge his sentence on appeal from a probation revocation. Stephens v. State, 818 N.E.2d 936, 939 (Ind. 2004).

Here, the trial court had an ample basis for the probation revocation decision and sentence reinstatement. Deverick has not demonstrated an abuse of the trial court's discretion in the probation revocation proceedings.

Affirmed.

MATHIAS, J., and BARNES, J., concur.